

DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 04-20150558P; 04-20150557P; 04-20150556P**Sales Tax - Penalty
For the Period 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Company showed that its failure to remit sales/use tax was due to reasonable cause, not willful neglect. Thus, the negligence penalty is waived for the tax year 2013.

ISSUE**I. Tax Administration–Penalty.**

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a construction company made up of three subsidiaries operating in Indiana. Taxpayer was audited by the Indiana Department of Revenue ("Department") for Sales/Use Tax for the years 2012-2013. A proposed assessment, including ten percent penalty and interest, was issued by the Department. Taxpayer subsequently provided additional documentation to the Department, and a Supplemental Audit was performed. In lieu of an administrative hearing, Taxpayer submitted a written protest. After a review by the Department of the Taxpayer's written protest and the information in the file, this Letter of Findings results. More facts will be provided below as needed.

I. Tax Administration–Penalty.**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty for the tax year 2013. In a letter to the Department, Taxpayer stated it relied on an employee to properly remit sales/use tax and reconcile the sales/use tax returns at the end of the year. The employee did not allocate money to offset any sales/use tax due and therefore did not properly remit the tax due. Taxpayer also stated that it has been in business for nearly 60 years and has general good compliance.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in

trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer's actions, through the actions of its employee who was tasked with proper remittance of tax, are the epitome of negligence. However because Taxpayer's history of compliance is generally good, the Department will abate the penalty in this instance. Furthermore, Taxpayer has taken steps to insure that this action does not occur again. Therefore, the Department sustains the Taxpayer's penalty protest. While Taxpayer's current circumstances show that Taxpayer acted with reasonable cause, Taxpayer is on notice that such in action will be deemed negligent.

FINDING

Taxpayer's protest of the penalty is sustained.

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